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FILE NUMBER 20459-001

DIRECT DIAL

November 25, 1997

BY OVERNIGHT COURIER

U.S. Army Corps of Engineers
Sacramento District
1325 J. Street
Sacramento, CA 95814-2922

**Re: Comments on Project Modification Report and Draft
Environmental Assessment/Initial Study for Prospect Island**

Dear Sir or Madam:

Enclosed herewith are the comments of Reclamation District #501. We are also enclosing technical comments from our engineers, Kjeldsen, Sinnock Neudeck, Inc. Please consider these comments. On behalf of Reclamation District #501, we hereby request that an environmental impact statement/environmental impact report be prepared under the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). Moreover, we formally request that a public hearing on the subject proposed action be held as soon as possible.

**1. THE PROJECT ENVIRONMENTAL ASSESSMENT/INITIAL STUDY (EA/IS)
FAILS TO ANALYZE REASONABLE ALTERNATIVES TO THE PROJECT.**

All alternatives that were considered in the Project report and the EA/IS require the flooding of Prospect Island and the breaching of the levees at Miner Slough, except the no action alternative. A reasonable alternative to this project would be to identify other suitable areas with the same geographic region for habitat restoration. Prospect Island is not the only suitable site for such an activity. The EA/IS fails to even identify the criteria used to determine that Prospect Island is the only suitable site for the restoration project. Moreover, the EA/IS considers breaching of the levees at Miner Slough and fails to consider any reasonable alternatives to that action. The breaching of levees on Miner Slough may have a significant impact on adjoining islands. This impact must be analyzed and alternatives suggested, such as flooding Prospect Island without breaching the Miner Slough levees or providing adequate mitigations to prevent impacts on Ryer Island from Miner Slough

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levee breaches.

Alternatives analysis in an environmental document is at the heart of the analysis and decision making. Thomas v. Peterson, 753 F.2d 754 (9th Cir. 1985). The alternatives analysis ensures the decision maker has before him or her the necessary range of reasonable alternatives in order to make an intelligent and informed decision. Calvert Cliffs' Coordinating Committee, Inc. v. Atomic Energy Commission, 449 F.2d 1109 (D.C. Cir. 1971). The rule of reason controls the range of reasonable alternatives that must be analyzed and in this case, the Army must include alternatives that do not require the flooding of Prospect Island and/or the breaching of levees at Miner Slough. See Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519 (1978). California Environmental Quality Act (CEQA) Guidelines Section 15126(d) provides that alternatives analysis must be accomplished in order to provide the decision maker with choices that will avoid or lessen environmental impacts. Here there is no evaluation that addresses the lessening of impact to Prospect Island, Miner Slough and the surrounding areas.

2. THE EA/IS FAILS TO ADEQUATELY ANALYZE THE POTENTIAL ENVIRONMENTAL IMPACTS OF THE PROPOSED ACTION BECAUSE IT DID NOT DEVELOP INFORMATION NECESSARY TO DETERMINE THE EFFECTS OF THE PROJECT ON LEVEES, INCLUDING WIND AND WAVE EROSION.

Under NEPA and CEQA, the proponent of the action must analyze the potential environmental impacts from the proposal. Under CEQA, if a "fair argument" can be made that the project may cause environmental impacts then the agency must prepare an environmental impact report or propose and adopt mitigations to avoid the impacts. The same is true under NEPA. An agency must take a hard look at the project to determine if environmental impacts will result and if so prepare an EIS.

Section 4 of the EA/IS fails to address the potential impact of wind and wave action on existing and constructed levees as a result of the project. The failure to analyze the land use impacts and the potential for failure of a levee makes the EA/IS inadequate. The document should evaluate whether the system of levees will withstand the elements after Prospect Island is converted into permanent habitat. The changes in conditions due to the open expanse of water and the alteration in water flows and breaks, militate for an evaluation of the dynamics of levee erosion and channel protection. The failure to even address these issues, let alone evaluate them makes the EA/IS inadequate.

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3. THE EA/IS SHOULD HAVE ANALYZED THE POTENTIAL IMPACTS FROM THE PROJECT ON FISH MIGRATION PATTERNS, PREDATOR SPECIES INTRUSION, WATER QUALITY DEGRADATION, EROSION OF LEVEES, POTENTIAL DISRUPTION OF ACCESS TO ISLANDS, AND SHIP CHANNEL DEGRADATION.

The alternatives listed in the Project Report and analyzed in the EA/IS raise significant issues concerning fish migration patterns, predator species intrusion, water quality degradation, erosion of levees, potential disruption of access, and ship channel degradation. The report indicates that these are all impacts which could result from the proposed action but there is insufficient information to determine if such impacts will result. Moreover, no specific mitigations are devised to address these impacts and the document is devoid of any in depth analysis, dismissing the problems as ones that will be dealt with as the adverse situation arises.

Of particular concern to Reclamation District #501 is the potential for levee erosion. The lifeblood of any of the tracts in the Delta is the ability to prevent flooding through the complex system of levees that protect the islands. The Army must provide sufficient assurances through its environmental and engineering analysis that this project will not result in failure of a levee. As pointed out by Kjeldsen Sinnock Neudeck, Inc. in its report, there are significant questions about wind and wave erosion effects on the levees and the ability of the Army design to withstand the 100 year erosion forces in the Delta. The Army must provide an analysis of the design that will adequately demonstrate that there will be no adverse effects on existing farms around the project. This includes analysis showing that the levee design proposed by the Army can withstand the forces of nature that one can reasonably expect to occur. According to our analysis, the Army has failed to evaluate a levee system where the water is on both sides of the levee, as opposed to the usual situation where water is on one side and land on the other. This significant difference requires much more indepth analysis and supporting evaluation before a conclusion can be reach on significant impacts.

4. THE DRAFT FINDING OF NO SIGNIFICANT IMPACT FAILS TO MEET THE REQUIREMENTS OF NEPA BECAUSE IT DOES NOT STATE EVEN IN A SUMMARY FASHION WHY THE PROJECT WILL NOT HAVE A SIGNIFICANT IMPACT ON THE HUMAN ENVIRONMENT.

The CEQ regulations require that the agency in drafting a finding of no significant impact (FONSI) must state in summary fashion why the project will not have a significant impact on the

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human environment. 40 CFR 1508.13. The document may be attached to the EA and need not repeat the information in that document. However, the FONSI must at least articulate why the agency believes that it is not necessary to prepare an EIS and the reasons for that decision.

The FONSI for the Prospect Island Project states that no EIS is required based on a review by the District Engineer. The document states that specific environmental impacts have been analyzed and the document has been reviewed by a number of agencies. The document then makes a plea for wetlands and their importance to the ecosystem. Finally, the document states the EA/IS was prepared in accordance with NEPA and based on the District Engineer's review the proposed action would not result in a significant environmental impact.

Nowhere in the draft FONSI are the potential environmental impacts from the project even addressed. The EA/IS contains numerous mitigations that must be adopted by the agency in order to avoid significant impacts. These mitigations measures are not mentioned and there is no indication that the agency is committed to adopting and implementing them in the course of the project. Certainly, the agency has not even made a commitment to the additional studies necessary to resolve the issues at Ryer Island. For these reasons, the FONSI, like the EA/IS suffers from inadequacies that violate NEPA.

5. THE EA/IS DOES NOT REFERENCE ALL OF THE REPORTS AND STUDIES OF THE PROJECT MODIFICATION REPORT AND THE EA/IS WAS NOT PREPARED BY QUALIFIED ENGINEERS THAT CAN ANALYZE REPORTS DEALING WITH LEVEE ENGINEERING, FLOOD CONTROL, HYDROGEOLOGY, SOIL EROSION, ENDANGERED SPECIES PROTECTION, AND WATER QUALITY ISSUES.

The list of references for the EA/IS does not include many of the reports and documents cited in the Project Modification Report. Whether this was an oversight or not, the preparers of the EA/IS have not revealed all of the documents they have relied on or the list is woefully inadequate.

As pointed out by our expert, the EA/IS was neither prepared by nor reviewed by any engineers. This makes any conclusions by the EA/IS as to levee construction, seepage, soil stability, hydrogeology, water quality, etc. very suspect. Under NEPA and CEQA, the agency is required to involve qualified experts in the various areas being analyzed to ensure the scientific accuracy of the information contained therein. It is insufficient to have the District Engineer to provide this expertise since the

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underlying information must be developed by qualified people. 40 CFR 1502.17, 1502.24. For this reason, the accuracy of the EA/IS is questionable.

6. THE EA/IS FAILS TO ADDRESS INDIRECT EFFECTS OF CREATING HABITAT ON ADJOINING FARM TRACTS, SUCH AS BUFFER ZONES, PESTICIDE AND HERBICIDE USE AND IRRIGATION WATER RUNOFF.

As a result of the establishment of the habitat at Prospect Island, one may expect that certain activities will be prohibited or must be curtailed. These activities may include setting of buffer zones to avoid interference with the habitat, prohibitions on the use of certain pesticides, herbicides and fertilizers near the habitat, the control of irrigation water runoff, etc. Of particular concern to the Reclamation District is the inability to control weeds and other growth on the levees. Such growth, if left uncontrolled, may weaken the levees and cause a premature breach. The EA/IS fails to evaluate these impacts on adjoining farmland. The project could increase the chance that flooding could occur or that farmland could be rendered useless. Thus its conclusion that the project will not affect land use except at Prospect Island is erroneous. For this reason, the EA/IS is inadequate and no FONSI should be issued.

7. THE EA/IS FAILS TO ADDRESS THE ISSUE OF ENDANGERED SPECIES BEING SUCKED INTO IRRIGATION PUMPS AND THE POTENTIAL IMPACTS ON FARMING OPERATIONS.

The EA/IS indicates that endangered species will inhabit the area of Prospect Island in increasing numbers. There is a very brief discussion of the problem with endangered fish being sucked into the irrigation pumps of farms. What is not discussed is the requirement that the farms may have to replace their pumps with very expensive equipment that will prevent or reduce the migration of the fish into the pumps. The impact of this change could preclude farmers from continuing to farm in various areas or could make it so economically difficult that they must abandon farming. Again, the EA/IS is inadequate in its treatment of this impact.

CONCLUSION

For the reasons stated above, the EA/IS is inadequate under both NEPA and CEQA and does not support a FONSI. We strongly urge that an EIS be prepared and that a public hearing on the environmental effects of the project be held prior to a record of decision being prepared.

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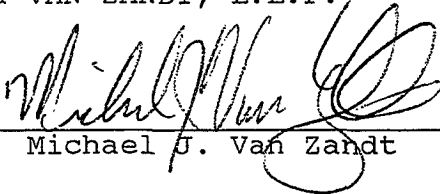
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Very truly yours,

McQUAID, METZLER, McCORMICK
& VAN ZANDT, L.L.P.

By



Michael J. Van Zandt

Enclosure

cc: Reclamation District #501
Theodore A. Kolb, Esq.